IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Criminal Application No. 1378/2007

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande, J**
DATE : 6.6.2007

Heard Mr. Amol Mardikar, learned counsel for the applicant and Mr. Doifode, learned A.P.P. for respondent no. 1.

2. By this application under Section 482 of the Code of Criminal Procedure the applicant challenges the Judgment and order dated 18.4.2007 passed by the Sessions Judge, Gadchiroli dismissing the Criminal Revision No. 26/05 filed by the applicant against the order dated 22.11.2005 passed by the Judicial Magistrate, First Class, Gadchiroli in Misc. Criminal Application No. 154/04.

3. Respondent no.2 and his mother viz. Meena filed the proceedings under Section 125 of the Code of Criminal Procedure against the applicant claiming maintenance before the Judicial Magistrate, First Class, Gadchiroli and by the Judgment dated 22nd November, 2005 the learned Magistrate granted maintenance of Rs. 1000/- p.m. to the respondent no.2 herein and refused maintenance to Meena

the applicant no.1 in the Misc. Application No. 154/04. Against the said Judgment, two revision applications were preferred, one by the present applicant and another by said Meena. The revision preferred by the present applicant was dismissed whereas the revision preferred by said Meena was allowed. The applicant has preferred the present application challenging grant of maintenance in favour of Chi Yash a minor child of Meena on the ground that there was no valid marriage between the applicant and said Meena.

4. According to Mr. Mardikar, there was no valid marriage between the applicant and said Meena since the marriage of Meena with her first husband was subsisting at the time of alleged marriage between the applicant and Meena. Therefore, Section 112 of the Evidence Act is not attracted. Mr. Mardikar, therefore, contends that the impugned order passed by the Magistrate and confirmed by the Sessions Judge deserves to be quashed and set aside.

5. Having considered the submissions made by Mr. Mardikar and having perused the impugned orders I find no merit in the present matter. Under section 125 of the Code of Criminal Procedure even the applicant is bound to pay maintenance to an illegitimate minor child. As such the question of validity of the marriage does not arise in case of grant of maintenance to a minor child born out of the

relations between a male a female. The evidence produced before the Magistrate clearly establishes that the respondent no.2 was born out of the relationship between the applicant and said Meena and, therefore, the applicant is bound to pay maintenance in favour of the respondent no. 2. I do not find any infirmity in the orders passed by both the courts below. In any case, this is not a fit case in which this court should exercise jurisdiction under Section 482 of the Code Criminal Procedure which can be only exercised to give effect to order passed by this Court or to prevent abuse of the process of court or otherwise to secure the ends of justice. None of the ingredients of section 482 are attracted in the present case. Hence the application is rejected.

Judge

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